IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO.1121 OF 2005
(For Leave to file appeal)

The State of Maharashtra ..Applicant.

v/s.

Nilkanth @ Sani Naru Mirdha .. Respondent.

Ms.Usha Kejariwal, Additional Public Prosecutor for the State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 1st March, 2005

P.C.

Heard Ms.Usha Kejariwal, the learned Additional Public Prosecutor. We perused the impugned judgment and also went through the evidence supplied by the learned Additional Public Prosecutor.

2. Three persons including the present respondent were put up for trial in the Court of III Additional Sessions Judge, Thane in Sessions Case No.169 of 2003 of the offences punishable under sections 459, 460 and 380 read with 34 of the IPC. The allegations against the accused persons were that in furtherance of the common intention while committing the lurking house trespass or house-breaking, the

accused persons caused grievous hurt to Bharat Jain and voluntarily caused death of Santoshidevi and committed the theft of gold ornaments amounting to Rs.6,00,000/- from the shop of Kanchan Jewellers.

3. Upon conclusion of the trial, two accused persons viz. Nirmal @ Rakesh Dnyaneshwar Thakur and Chandankumar Gaurishankar Shah have been convicted by the learned trial court for an offence punishable under section 460 of the IPC. They have been sentenced to suffer life imprisonment and pay a fine of Rs.100/- and in default to suffer R.I. for one month. Both these accused persons have also been convicted for the offence punishable under section 380 read with 34 of the IPC and sentenced to suffer R.I. for three years and pay a fine of Rs.100/- and in default to suffer R.I. for one month. However, the present respondent has been acquitted. Aggrieved by the acquittal of the present respondent, the State has filed this criminal application for leave to appeal.

4. Since the subject matter of this appeal is the acquittal of the present respondent, our consideration of the matter is to that extent only.

5. In so far as present respondent is concerned,

the prosecution sought to prove the recovery of melted gold from the present respondent by the evidence of Madanlal Jain (PW4). On the careful consideration of his evidence, we find that the evidence of PW4 in this regard is not safe for reliance. Though PW4 deposed that Nilkanth (the present respondent) approached him for selling the golden bracelet and locket because of his son's illness, he could not indicate the amount that was paid by him to the accused for the purchase of bracelet and locket. As a matter of fact the recovery of ornaments from the present respondent is not established by reliable evidence. Bharat Jain (PW14) in his deposition admitted that after having received the blow on his head, he became unconscious. He did not identify the present respondent nor there is any evidence on record establishing the presence of the present accused alongwith the other two accused persons convicted by the trial court.

6. In the circumstances, the view of the learned trial Judge that sufficient evidence against the present respondent is wanting, is the possible view.

7. No case for grant of leave is made out.

8. Criminal application for leave to appeal is, accordingly, rejected.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)